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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,681	03/25/2004	Carl Gustav Figdor	2578-4230.1US	6537
24247	7590	11/27/2007	EXAMINER	
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			RAWLINGS, STEPHEN L	
			ART UNIT	PAPER NUMBER
			1643	
			NOTIFICATION DATE	DELIVERY MODE
			11/27/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10808681	3/25/04	FIGDOR ET AL.	2578-4230.1US

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EXAMINER

Stephen L. Rawlings, Ph.D.

ART UNIT	PAPER
1643	20071119

DATE MAILED:

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Commissioner for Patents

Notice of Non-Responsive Amendment

1. The amendment filed September 7, 2007, is non-responsive for the following reason:

The amendment filed September 7, 2007, would amend all claims, which were previously drawn to the elected species of invention, so as to present only claims drawn to a non-elected species of invention.

The claims, as would be amended, are not readable on the elected invention for the following reasons:

Applicant's amendment seeks to cancel claims 4 and 5, which were previously withdrawn as directed to the subject matter of non-elected species of the invention of Group I; in addition, the amendment would amend claims 1, 3 (withdrawn), 6, 7, and 10, and add claim 17.

Claims 1, 3 (withdrawn), 6, 7, 10, and 17, as presented by the amendment, would be directed to a peptide consisting of the amino acid sequence of SEQ ID NO: 1 *wherein the amino acid at position 2 thereof is valine*. Notably, the amino acid at position of SEQ ID NO: 1 is not valine, but rather threonine; nevertheless, it is presumed that Applicant has intended that the claims be directed to a peptide consisting of the amino acid sequence of SEQ ID NO: 34. SEQ ID NO: 34 is identical to SEQ ID NO: 1, but for the substitution of the threonine at position 2 thereof by valine.

The originally presented claims were directed to a peptide comprising at least part of the amino acid sequence of SEQ ID NO: 9 wherein the original amino acid at position 2 thereof is substituted with valine. The amino acid sequence of SEQ ID NO: 9 differs from the amino acid sequence of SEQ ID NO: 1 by the occurrence of glutamine, rather than alanine, at position 8; and as such, a peptide comprising at least part of the amino acid sequence of SEQ ID NO: 9, wherein an original amino acid at position 2 thereof is substituted with valine, is structurally distinct from a peptide consisting of the amino acid sequence of SEQ ID NO: 1, but for the substitution of the threonine at position 2 thereof by valine. Although both the peptides have amino acid sequences with a valine in the second position, they differ by the occurrence of different amino acids in the eighth position of their sequences.

Applicant has elected the species of the invention of Group I, wherein the peptide comprises at least part of the amino acid sequence of SEQ ID NO: 9, wherein the original amino

acid at position 2 thereof is substituted by valine; see page 2 of the response filed February 20, 2007. The amino acid sequence of the elected species of peptide is the amino acid sequence set forth as SEQ ID NO: 2. Applicant's election without traverse was acknowledged at page 3 of the first Office action on the merits, which was mailed June 11, 2007. Furthermore, it is immediately apparent that the claims were previously examined only to the extent that the claims read on the elected species (i.e., a peptide comprising at least part of the amino acid sequence of SEQ ID NO: 2); see the preceding Office action of June 11, 2007, at, e.g., page 9, paragraph 3; and page 15, paragraph 5.

In contrast, as would be amended, claims 1, 3 (withdrawn), 6, 7, 10, and 17 would be directed to any of a genus of peptides consisting of an amino acid sequence in which the amino acid at the eighth position is alanine – not glutamine, or the amino acid that occurs at the eighth position of the amino acid sequence of SEQ ID NO: 2. Thus, regardless of other notable differences at position 2 of the members of this genus of peptides, the search and consideration that Applicant's originally presented claims have already received would not suffice to determine the patentability of such newly claimed subject matter. Moreover, as would be amended or presented, none of the claims would read on the elected species of invention, which is a peptide having an amino acid sequence in which the amino acid at position 8 is glutamine¹.

Because the breadth of the claims presented by the amendment differs so substantially from the breadth of the originally present claims, examination of the amended claims would require new and different considerations and searches, which were not before necessary. As such, examination of the claims, as would be amended or presented by Applicant's amendment, would be unduly burdensome.

Since Applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, after entry of the amendment, all remaining claims would be withdrawn from consideration as being directed to non-elected inventions, and therefore the

¹ It is such structural differences that provided the reasons that claims 2-4 had been previously withdrawn (i.e., each claim is directed to a peptide having the amino acid sequence of SEQ ID NO: 9, but for substitution of the original glutamine at position 8 by alanine).

amendment, which presents only claims drawn to such non-elected inventions, is non-responsive. See 37 C.F.R. § 1.142(b) and M.P.E.P. § 821.03.

2. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen L. Rawlings, Ph.D. whose telephone number is (571) 272-0836. The examiner can normally be reached on Monday-Friday, 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms, Ph.D. can be reached on (571) 272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Stephen L. Rawlings/
Stephen L. Rawlings, Ph.D.
Examiner
Art Unit 1643

slr
November 19, 2007